

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

APR 28 2005

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

at 2 o'clock and 56 min. P.M.
WALTER A. Y. H. CHINN, CLERK

UNITED STATES OF AMERICA,)	Crim. No. 03-00060 HG
)	
Plaintiff,)	
)	
vs.)	ORDER GRANTING UNITED STATES'
)	MOTION PURSUANT TO RULE 35(b)
)	OF THE FEDERAL RULES OF
CLAYTON FOSTER,)	CRIMINAL PROCEDURE
)	
Defendant.)	
)	

**ORDER GRANTING UNITED STATES' MOTION PURSUANT TO RULE 35(b) OF
THE FEDERAL RULES OF CRIMINAL PROCEDURE**

On May 1, 2003, Defendant Clayton Foster ("Foster") pled guilty to conspiracy to distribute and possess with intent to distribute 50 or more grams of methamphetamine, in violation of 21 U.S.C. §§ 846 and 841(a)(1). On February 23, 2004, the Court imposed a sentence of 121 months imprisonment.

On February 15, 2005, the Government filed a motion to reduce Foster's sentence pursuant to Federal Rule of Criminal Procedure 35(b). The Government provided details of the assistance Foster provided in the investigation and prosecution of other crimes by way of a sealed filing. The Government recommended a 12-month reduction of Defendant's sentence, from 121 months to 109 months.

On February 25, 2005, Foster filed a Response to the Government's motion. Foster claimed that he provided assistance

beyond that described in the Government's February 15, 2005 motion. Foster argued that the Government's recommendation did not adequately reflect the level of assistance he provided, and submitted that a 61-month sentence reduction, from 121 months to 60 months, is appropriate.

On March 3, 2005, the Government filed a Preliminary Answer to Foster's Response. The Government indicated that it would further investigate Foster's claims of additional assistance.

On April 20, 2005, the Government filed an Answer to Foster's Response after investigating Foster's claims of additional assistance. The Government concluded that Foster had not provided any information of assistance beyond that described in its February 15, 2005 motion.

After reviewing the information provided by the Government and Foster concerning the level of Foster's cooperation, the Court GRANTS the Government's motion to reduce Foster's sentence. Foster's sentence is reduced by 24 months to a term of 97 months.

STANDARD OF REVIEW

Federal Rule of Criminal Procedure 35(b)(1) provides:

Upon the government's motion made within one year of sentencing, the court may reduce a sentence if:

(A) the defendant, after sentencing, provided substantial assistance in investigating or prosecuting another person; and

(B) reducing the sentence accords with the Sentencing Commission's guidelines and policy statements.

A Rule 35 motion is essentially a plea for leniency and is

addressed to the sound discretion of the district court. United States v. Smith, 964 F.2d 885, 887 (9th Cir. 1992); United States v. Hooton, 693 F.2d 857, 859 (9th Cir. 1982).

ANALYSIS


The Court finds that Foster substantially assisted the Government in the investigation and prosecution of criminal activity. Foster is entitled to a reduction of his sentence pursuant to Rule 35(b)(1). Based on the nature of Foster's cooperation, the Court finds that a sentence reduction of 24 months is appropriate and is consistent with the Sentencing Guidelines and the Sentencing Commission's policy statements.

CONCLUSION

In accordance with the foregoing, the Court GRANTS the Government's motion filed on February 15, 2005 and reduces Foster's sentence of 121 months to 97 months.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, April 28, 2005


HELEN GILLMOR
United States District Judge

United States v. Clayton Foster, Crim. No. 03-00060 HG; ORDER GRANTING UNITED STATES' MOTION PURSUANT TO RULE 35(b) OF THE FEDERAL RULES OF CRIMINAL PROCEDURE